

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2017-07ST
October 29, 2018

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ISSUES

Sales and Use Tax - Online Educational Services

Authority: [IC 6-2.5-1-1](#); [IC 6-2.5-1-11.5](#); [IC 6-2.5-1-24](#); [IC 6-2.5-1-26.5](#); [IC 6-2.5-1-27](#); [IC 6-2.5-1-27.5](#); [IC 6-2.5-1-28.5](#); [IC 6-2.5-2-1](#); [IC 6-2.5-2-2](#); [IC 6-2.5-4-1](#); [IC 6-2.5-4-6](#); [IC 6-2.5-4-16.4](#); [IC 6-2.5-4-16.7](#); [45 IAC 2.2-1-1](#); [45 IAC 2.2-4-2](#); Sales Tax Information Bulletin #8 (June 2018); *Streamlined Sales and Use Tax Agreement* (May 10, 2018).

A taxpayer ("Company") is seeking an opinion as to whether Company is providing an educational service that is not subject to the Indiana sales and use tax.

STATEMENT OF FACTS

Company is an out-of-state corporation that provides online education services for customers in the field of property management. Company provides the following information regarding its business:

[Company] offers high-quality, interactive property management education services in their ["Educational Resource"]. [Company] provides its property management education services through: (1) subscriptions to training content, and (2) a license to a portal where the training content resides, along with tracking tools and customer/client specific content. The course content is created and re-viewed by [Company] personnel based on years of experience in the property management field and knowledge gained through the years. For their property management education services, there is no software or CD for the learners to install or download. The education content is housed on servers that are located outside of Indiana.

Customers can access the formal courses of instruction anywhere there is high-speed internet access as the training courses are offered through the internet. Each course comes with a pre-test check and knowledge challenge built to gauge the student's comprehension. Each knowledge challenge is different, as the exam is generated randomly from a database of questions.

Each student who achieves a 70% or higher score on the final knowledge challenge receives a course completion certificate. If the student achieves a perfect 100% score, they receive mastery certificate indicating their perfect score. Access to the online training and ancillary built-in tracking facilitate the education experience so both students and supervisors can monitor progress and performance in the online trainings.

DISCUSSION

Based on the foregoing facts, Company requests a ruling as to whether it is providing a non-taxable educational or training service. Pursuant to [IC 6-2.5-2-1\(a\)](#) and [IC 6-2.5-2-2\(a\)](#), sales tax is imposed on retail transactions made in Indiana. [IC 6-2.5-4-1\(a\)](#) provides that "[a] person is a retail merchant making a retail transaction when he engages in selling at retail." A retail transaction is defined in [IC 6-2.5-4-1\(b\)](#) as the transfer, in the ordinary course of business, of tangible personal property for consideration. [IC 6-2.5-4-1\(c\)](#) goes on to provide in pertinent part:

For purposes of determining what constitutes selling at retail, it does not matter whether:

...

(2) the property is transferred alone or in conjunction with other property or services . . .

"Tangible personal property" is defined in [IC 6-2.5-1-27](#) as:

. . . personal property that:

- (1) can be seen, weighed, measured, felt, or touched; or
- (2) is in any other manner perceptible to the senses.

The term includes electricity, water, gas, steam, and prewritten computer software.

Except for certain enumerated services, sales of services generally are not retail transactions and are not subject to sales or use tax. [45 IAC 2.2-4-2](#) clarifies the taxability of services as follows:

- (a) Professional services, personal services, and services in respect to property not owned by the person rendering such services are not "transactions of a retail merchant constituting selling at retail", and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:
 - (1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
 - (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
 - (3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
 - (4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.
- (b) Services performed or work done in respect to property and performed prior to delivery to be sold by a retail merchant must however, be included in taxable gross receipts of the retail merchant.
- (c) Persons engaging in repair services are servicemen with respect to the services which they render and retail merchants at retail with respect to repair or replacement parts sold.
- (d) A serviceman occupationally engaged in rendering professional, personal or other services will be presumed to be a retail merchant selling at retail with respect to any tangible personal property sold by him, whether or not the tangible personal property is sold in the course of rendering such services. If, however, the transaction satisfies the four (4) requirements set forth in [subsection (a)], the gross retail tax shall not apply to such transaction.

[IC 6-2.5-1-1](#) states that a "'unitary transaction' includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." A unitary transaction is clarified in [45 IAC 2.2-1-1\(a\)](#) as follows:

Unitary Transaction. For purposes of the state gross retail tax and use tax, such taxes shall apply and be computed in respect to each retail unitary transaction. A unitary transaction shall include all items of property and/or services for which a total combined charge or selling price is computed for payment irrespective of the fact that services which would not otherwise be taxable are included in the charge or selling price.

Regarding the sales of items transferred electronically, [IC 6-2.5-4-16.4\(b\)](#) provides that a person engages in making a retail transaction when the person (1) electronically transfers specified digital products to an end user; and (2) grants to the end user the right of permanent use of the specified digital products that is not conditioned upon continued payment by the purchaser. "Specified digital products," as currently defined by [IC 6-2.5-1-26.5](#), include only digital audio works (e.g., songs, spoken word recordings, ringtones), digital audiovisual works (e.g., movies), and digital books. Products "transferred electronically" are defined at [IC 6-2.5-1-28.5](#) to mean products that are "obtained by a purchaser by means other than tangible storage media."

Pursuant to Section 333 ("Use of Specified Digital Products," effective Jan. 1, 2010) of the *Streamlined Sales and Use Tax Agreement* ("SSUTA;" May 10, 2018), of which Indiana is a signatory, "[a] member state shall not include any product transferred electronically in its definition of 'tangible personal property.'" Section 332 of the SSUTA provides that "[a] member state shall not include 'specified digital products', 'digital audio-visual works', 'digital audio works' or 'digital books' within its definition of 'ancillary services', 'computer software', 'telecommunication services' or 'tangible personal property.'" This means prewritten computer software transferred electronically is still taxable. Section 332 also provides that a state is not prohibited from imposing a sales or use tax on specified digital products.

Additionally, [IC 6-2.5-1-27.5\(c\)\(8\)](#) explicitly excludes ancillary services from the definition of telecommunication services, which are taxable under [IC 6-2.5-4-6](#) when they are intrastate, meaning "that the transmission must originate and terminate within Indiana." *Grand Victoria Casino & Resort, LP v. Indiana Dep't of State Revenue*, 789 N.E.2d 1041, 1045 (Ind. T.C. 2003). Accordingly, ancillary services are not subject to sales tax in Indiana.

Based on the foregoing, Indiana may impose sales tax on products transferred electronically only if the products

meet the definition of specified digital products, pre-written computer software, or telecommunication services.

Use of Company's web portal necessarily involves the use of prewritten computer software. "Prewritten computer software" is defined in [IC 6-2.5-1-24](#) as follows:

Subject to the following provisions, "prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser:

- (1) The combining of two (2) or more prewritten computer software programs or prewritten parts of the programs does not cause the combination to be other than prewritten computer software.
- (2) Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser.
- (3) If a person modifies or enhances computer software of which the person is not the author or creator, the person is considered to be the author or creator only of the person's modifications or enhancements.
- (4) Prewritten computer software or a prewritten part of the software that is modified or enhanced to any degree, where the modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such a modification or enhancement, the modification or enhancement is not prewritten computer software.

Because the software component of Company's training service offering is remotely accessed from servers that are located outside of Indiana, a fee for Company's website services would not be subject to Indiana sales or use taxes pursuant to [IC 6-2.5-4-16.7](#), which is effective July 1, 2018. [IC 6-2.5-4-16.7](#) provides that prewritten computer software sold, rented, leased, or licensed for consideration that is remotely accessed over the internet, over private or public networks, or through wireless media, is not considered an electronic transfer of computer software and is not considered a retail transaction. In other words, after June 30, 2018, transactions for prewritten computer software remotely accessed from a hosted computer or server or through a pool of shared resources from multiple computers and servers, without having to download the software to the user's computer, are not considered retail transactions, and therefore the purchase, rental, lease, or license of that software is not subject to Indiana sales or use tax.

[IC 6-2.5-4-16.7](#) only applies to transactions occurring after June 30, 2018, and is not applicable to transactions where remotely accessed software was contracted for a period of time beginning prior to and overlapping the July 1, 2018 effective date. However, if Company's contracts with its customers requires periodic payments over the contracted period, some of which occur after July 1, 2018, the Department will treat those as separate transactions. The Department has issued specific guidance in Sales Tax Information Bulletin #8 (June 2018) to address the treatment of recurring payments as separate transactions:

[I]n this unique and limited circumstance involving remotely accessed software [the Department] will consider each invoice for periods occurring July 1 and after as entitled to treatment under the new law. Any payments made prior to July 1 for remotely accessed software are not eligible to be refunded, including payments encompassing periods occurring after July 1, unless another reason is provided for the refund request (e.g., the software was used for an exempt purpose such as being directly used in direct manufacturing of tangible personal property for sale). If a contract where payment in full was made expires after July 1, 2018, but the contract automatically renews or it is mutually agreed that the contract will renew for another period, or if rolling periods of payment occurs after the end of the contract to keep the terms of the contract proceeding on a month-by-month basis (for instance), these new periods will be treated as a separate transaction and will be subject to treatment under the new law.

Having said that, transactions entered into after June 30, 2018, for Company's educational services are not subject to Indiana sales or use taxes, as it involves the provision of two nontaxable elements (the services and the remotely accessed software). As Revenue Rulings are prospective in nature, transactions occurring June 30, 2018, or earlier, will not be addressed.

"Telecommunication services" is defined in [IC 6-2.5-1-27.5\(a\)](#) to mean an "electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points." However, "telecommunication services" does not include the following:

Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information.

[IC 6-2.5-1-27.5](#)(c)(1). The online database is clearly not a telecommunication service, but if there were any question as to whether it were, the educational service would not be considered a "telecommunication service" because it meets the exception of providing information services.

Finally, a total combined charge for the provision of services and remotely accessed software would not be considered a unitary transaction, nor a "bundled transaction" under [IC 6-2.5-1-11.5](#), because the individual components are either exempt or otherwise not subject to sales tax after July 1, 2018.

RULING

Because the software component of Company's educational service offering involves software that is remotely accessed, the transactions for Company's educational services occurring July 1, 2018, and after, are not subject to Indiana sales or use taxes pursuant to [IC 6-2.5-4-16.7](#).

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

Indiana Department of State Revenue

Posted: 12/26/2018 by Legislative Services Agency
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